

will promote cooperation and resolution of mutual land use and environment-related problems.

(2) Preparation of a Memorandum of Understanding is desirable for promoting cooperation and coordination. This memorandum will identify areas of mutual interest, establish POCs, identify lines of communication between agencies, and specify procedures to follow in conflict resolution. Additional coordination is available from State and area-wide planning and development agencies, including those designated by AR 210-10. Thus, the proponent may gain insights on other agencies' approaches to EAs, surveys, and studies of the current proposal. These other agencies would also be able to assist in identifying possible participants in scoping procedures for projects requiring an EIS.

§ 651.13 Mitigation and monitoring.

(a) Identification in environmental documents. Only those mitigation measures that can reasonably be accomplished as part of a proposed alternative will be identified in environmental documentation (EA, FNSI, or EIS). Measures that the proponent implements as part of the selected action will be included in the environmental documentation. Mitigation measures that appear practicable, but unobtainable within expected resources or that some other agency (including non-Army agencies) should perform, will be identified as such in the environmental document. "Practicable" measures include, among others, actions that appear capable of being accomplished. Complete development or testing of the exact means of performing the action may not have occurred.

(b) Consideration throughout the National Environmental Policy Act (NEPA) process. Consider mitigation throughout the NEPA process. When an EIS or EIS Supplement is prepared, the ROD will state specific mitigation measures taken to reduce or avoid the selected action's adverse environmental effects. For EAs, the FNSI will state, when applicable, the appropriate mitigation measures that will be implemented. The proponent must ensure such mitigation measures become a project line item in the proposal budg-

et. Mitigations that are committed to in an EA, but that are eventually not funded, must lead to reevaluation of the project and the significance of its impacts. In addition, the FNSI will state those practicable mitigation measures that have not been adopted. (40 CFR 1505.2(c)).

(c) Assistance from cooperating non-Army agencies. Proponents may request assistance with mitigation when appropriate. Whether it is appropriate to request assistance is determined by whether the requesting agency—

(1) Was a cooperating agency during preparation of an environmental document, or

(2) Has the technology, expertise, time, funds, or familiarity with project or local ecology necessary to implement the mitigation measure more effectively than the lead agency.

(d) Implementing the decision.

(1) The proponent agency or other appropriate cooperating agency will implement mitigation and other conditions established in the EA or EIS or during its review, and committed as part of the FNSI or the ROD.

(2) Legal documents implementing the action (contracts, permits, grants, and so forth) will specify mitigation measures to be performed. Penalties against the contractor for noncompliance may also be specified as appropriate. Specification of penalties should be fully coordinated with the appropriate legal advisor.

(3) A monitoring and enforcement program will be adopted and summarized in the ROD where applicable for any mitigation. (See appendix F for guidelines on implementing such a program.) Whether adoption of a monitoring and enforcement program is applicable (40 CFR 1505.2(c)) and whether the specific adopted action is an important case (40 CFR 1505.3) may depend on such factors as the following:

(i) A change in environmental conditions or project activities assumed in the EIS (such that original predictions of the extent of adverse environmental impacts may be too limited).

(ii) Cases when the outcome of the mitigation measure is uncertain (for example, new technology).

(iii) Projects in which major environmental controversy remains associated with the selected alternative.

(iv) Cases when failure of a mitigation measure, or other unforeseen circumstances, could result in serious harm to Federal or State listed endangered or threatened species; important historic or archaeological sites that are either on, or meet eligibility requirements for nomination to the National Register of Historic Places; wilderness areas, wild and scenic rivers, or other public or private protected resources. Evaluation and determination of what constitutes serious harm in coordination with the appropriate Federal, State or local agency responsible for each particular program must be made.

(v) The proponent will respond to inquiries from the public or other agencies regarding the status of mitigation measures adopted.

Subpart C—Required Records and Documents

§ 651.14 Introduction.

The following records and documents are required:

(a) *Record of Environmental Consideration (REC)*. The REC describes the proposed action and anticipated time-frame, identifies the proponent, and explains why further environmental analysis and documentation is not required. It is a signed statement to be submitted with project documentation. It is used when the proposed action is exempt from the requirements of NEPA, or has been adequately assessed in existing documents and determined not to be environmentally significant. A REC is also used to document the use of those CX that require such records. (See Figure 3 for format.)

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

To: (Environmental Officer)

From: (Proponent)

Project title:

Breif description:

Anticipated date and/or duration of proposed action: (Month/year)

Reason for using record of environmental consideration (choose one):

a. Adequately covered in an (EA, EIS) entitled _____, dated _____.

The EA/EIS may be reviewed at _____. (location)

OR,

b. Is categorically excluded under the provisions of CX _____, AR 200-2, appendix A, (and no extraordinary circumstances exist as defined in paragraph 4-3), because

Date

Project Proponent

Date

Installation Environmental Coordinator

Variation from this format is acceptable provided basic information and approvals are included in any modified document.

Figure 3. Format for record of environmental consideration (REC)

(b) *Environmental assessment (EA)*. An EA is a document that—

(1) Briefly provides the decisionmaker with sufficient evidence and analysis for determining whether a FNSI or an EIS should be prepared.

(2) Assures compliance with NEPA, if an EIS is not required and a CX is inappropriate.

(3) Facilitates preparation of a required EIS.

(4) Includes brief discussions of the need for the proposed action, alternatives to the proposed actions (NEPA, section 102(2)(e)) (see appendix C), proposed and alternative actions environmental impacts, and a listing of persons and agencies consulted. (See subpart E for requirements.)

(c) *Finding of no significant impact (FNSI)*. A FNSI is a document that briefly states why an action will not significantly affect the environment, thus voiding the requirement for an EIS. The FNSI will include a summary of the conclusions of the EA and will note any environmental documents related to it. If the EA is attached, the FNSI need not repeat any of the EA's discussion, but may incorporate it by reference. A FNSI is always signed by the decisionmaker. (See § 651.24 for processing.)

(d) *Notice of intent (NOI)*. An NOI is a public notice that an EIS will be prepared and considered. The NOI will briefly—

(1) Describe the proposed and alternative actions.

(2) Describe the proposed scoping process, including whether, when, and where any public meetings will be held.

(3) State the name and address of the POC who can answer questions on the proposed action and its EIS. (See §§ 651.32(a), 651.34(a), and 651.37 for application.)

(e) *Environmental impact statement (EIS)*. An EIS is a detailed written statement required by NEPA for major Federal actions with significant environmental effects (42 U.S.C. 4321, section 102(2)(c)). (See appendix C.) (See subpart F for requirements.)

(f) *Life cycle environmental document (LCED)*. The LCED is intended to be a programmatic assessment that addresses the known and reasonably foreseeable environmental impacts of a

proposed item/system during all phases of development, production, use, and ultimate disposal of the item/system. The LCED may be in the form of an EA or an EIS, and must be supplemental to address additional significant environmental impacts as conditions change. The LCED will be prepared by the DA proponent/developer (or program manager) and is most frequently used within the materiel research, development, and acquisition community.

(g) *Record of Decision (ROD)*. A public ROD is required under the provisions of 40 CFR 1505.2 after completion of an EIS. Nevertheless, the ROD is not considered to be an environmental document since the decision considers other factors in addition to environmental issues. (See § 651.32(i) for application.)

§ 651.15 Optional documents.

The following additional documents may assist in the implementation of this regulation. These documents are optional, but their use is encouraged.

(a) *Environmental planning guide*. Prepared prior to or at the outset of a major program concept exploration. It is a concise (for example, 10-page) document intended for use by the program planners and designers. It provides guidelines and supporting rationale by which planners and designers could prevent, avoid, or minimize adverse environmental effects through environmentally sensitive design and planning. Through appropriate language in the scope of work, contractors can be encouraged or required to use such an environmental planning guide.

(b) *Environmental planning record*. This records the progress and process of environmental considerations throughout a given program's development. Ideally, it is a document that is written when the program commences. There is no set form; it may be a journal with periodic entries, a file of memoranda, trip reports, and so forth. This document is a visible track record of how environmental factors have actually been considered and incorporated throughout the planning process. Through appropriate language in the scope of work, contractors can be encouraged or required to prepare an environmental planning record, or parts thereof.

(c) *Environmental monitoring report.* This report is prepared at one or more points after program or action execution. Its purpose is to determine the accuracy of impact predictions. It can serve as the basis for adjustments in mitigation programs and to adjust impact predictions in future projects.

Subpart D—Categorical Exclusions (CX)

§ 651.16 Introduction.

(a) The use of CX is intended to reduce paperwork and delay and eliminate unnecessary EA and EIS preparation. CX is defined in the Glossary.

(b) The following criteria will be used to determine those categories of actions that normally do not require either an EIS or EA:

- (1) Minimal or no individual or cumulative effect on environmental quality.
- (2) No environmentally controversial change to existing environmental conditions.
- (3) Similarity to actions previously examined and found to meet the above criteria.

§ 651.17 Determining when to use a CX.

In order to use the CX provision, the proponent must take the following actions:

- (a) Determine whether the proposal is encompassed by one of the categories not normally requiring the preparation of an EA or EIS. (See appendix A.)
- (b) Determine if there are any extraordinary circumstances that may result in the proposed action having an impact on the human environment that would require an EA or EIS. These circumstances include—
 - (1) Greater scope or size than normally experienced for a particular category of action.
 - (2) Potential for degradation, even though slight, of already existing poor environmental conditions. Also, initiation of degrading influence, activity, or effect in areas not already significantly modified from their natural condition.
 - (3) Employment of unproven technology.
 - (4) Presence of threatened or endangered species and their habitats, ar-

chaeological materials, historical places, or other protected resources.

(5) Use of hazardous or toxic substances that may come in contact with the surrounding natural environment. Nevertheless, a categorical exclusion exists for use of hazardous and toxic substances under adequately controlled conditions within established laboratory buildings that are designed for, and in compliance with, regulatory standards. Adequately controlled conditions includes complying with AR 385-10 and all other applicable Army safety and preventive medicine regulations for the processing of hazardous and toxic substances, and complying with the Resource Conservation and Recovery Act (RCRA) for their disposal.

(6) Proposed actions affecting areas of critical environmental concern. These include, but are not limited to, prime or unique agricultural lands, wetlands, coastal zones, wilderness areas, aquifers, floodplains, or wild and scenic river areas.

(c) Determine whether all the screening criteria in appendix A are true for the proposal.

(d) If the proposed action qualifies for one of the CX, no analytical environmental document is necessary. However, if a REC (Figure 3) is required by the CX listing in appendix A, a REC will be completed and signed by the proponent. Consultation between the proponent and the installation environmental coordinator is required.

§ 651.18 CX actions.

Types of actions that normally qualify for CX are listed in appendix A.

§ 651.19 Modification of the CX list.

The Army list of CXs is subject to continual review and modification. Send, for review, requested additional modifications to the Army Environmental Office. Subordinate Army headquarters may not modify the CX list through supplements to this regulation. Upon approval, proposed modifications to the list of CXs will be published in the FEDERAL REGISTER by the Army Environmental Office. This provides an opportunity for public review and comment.

Subpart E—Environmental Assessment (EA)

§ 651.20 Introduction.

An EA is made to determine the extent of environmental impacts of a project and decide whether or not those impacts are significant. It is not required for actions that are subject to categorical exclusion or exclusion from environmental review by law. (See 40 CFR 1508.9.) The EA is described in § 651.14(b).

§ 651.21 Conditions requiring an EA.

An EA is required when the proposed action has the potential for—

- (a) Cumulative impact on environmental quality when combining effects of other actions or when the proposed action is of lengthy duration.
- (b) Release of harmful radiation or hazardous/toxic chemicals into the environment.
- (c) Violation of pollution abatement Standards.
- (d) Some harm to culturally or ecologically sensitive areas.

§ 651.22 Actions normally requiring an EA.

The following actions normally require an EA:

- (a) Special field training exercise or test activity on Army land of a nature or magnitude not within the annual installation training cycle.
- (b) Military construction, including contracts for off-post construction.
- (c) An installation pesticide, fungicide, herbicide, insecticide, and rodenticide-use program.
- (d) Changes to established installation land use that generates impacts on the environment.
- (e) Proposed changes in doctrine or policy that may have a potential environmental impact.
- (40 CFR 1508.18 (b) (1)).
- (f) Repair or alteration projects affecting historically significant structures, archaeological sites, or places on, or meeting, the criteria for nomination to the National Register of Historic Places.
- (g) Acquisition or alteration of, or space for, a laboratory that will use hazardous chemicals, drugs, or biological or radioactive materials.

(h) Actions that could potentially cause soil erosion, affect prime or unique farmland, wetlands, floodplains, coastal zones, wilderness areas, aquifers or other water supplies, or wild and scenic rivers.

(i) New weapon systems development and acquisition, including the materiel acquisition, transition, and release processes.

(j) Development of installation master plan.

(k) Development of natural resource management plans (land, forest, fish, and wildlife).

(l) Proposals that may lead to the excessing of Army real property.

(m) Actions that take place in, or adversely affect, wildlife refuges.

(n) Proposals for energy conversion through forest harvest.

(o) Field activities on land not controlled by the military. This includes firing of weapons, missiles, or lasers over navigable waters of the United States, or extending 45 meters or more above ground level into the national airspace. It also includes joint air attack training that may require participating aircraft to exceed 250 knots at altitudes below 3000 feet above ground level.

(p) An action with local or regional effects on energy availability.

(q) An activity that affects any species on, or proposed for, the U.S. Fish and Wildlife Service list of Threatened and Endangered Plant and Animal Species. Also, activities affecting any species on an applicable State or territorial list of threatened or endangered species.

(r) Production of hazardous or toxic materials.

(s) Installation restoration projects undertaken in response to the CERCLA. (See § 651.8(a)(8) for a full discussion of the integration of NEPA and CERCLA/SARA.)

(t) Operations and Maintenance/Army National Guard projects that will impact environmental quality.

(u) Site specific deployment of life cycle systems meeting the threshold criteria for requiring an EA.

(v) Special field training exercises or test activities off Army or DOD property that extend into the national